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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the First Amended Accusation
Against:

Case No. 2013-295

12 **LYNN D. GARDINER, a.k.a. LYNN**
13 **GARDINER, a.k.a. LYNN DIANE**
14 **GARDINER-STEWART, a.k.a. LYNN**
15 **DIANE STEWART, a.k.a. LYNN**
16 **GARDINER STEWART, a.k.a. LYNN**
17 **GARDINER-STEWART**
386 Glenwood Avenue
San Carlos, CA 94070

FIRST AMENDED ACCUSATION

Registered Nurse License No. 331005

Respondent.

21 Complainant alleges:

22 **PARTIES**

- 23 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this First Amended Accusation
24 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
25 Department of Consumer Affairs.
- 26 2. On or about August 31, 1981, the Board of Registered Nursing issued Registered
27 Nurse License Number 331005 to Lynn D. Gardiner, also known as Lynn Gardiner, also known
28 as Lynn Diane Gardiner-Stewart, also known as Lynn Diane Stewart, also known as Lynn

1 Gardiner Stewart, also known as Lynn Gardiner-Stewart (Respondent). The Registered Nurse
2 License was in full force and effect at all times relevant to the charges brought in this First
3 Amended Accusation and will expire on August 31, 2013, unless renewed.

4 JURISDICTION

5 3. This First Amended Accusation is brought before the Board of Registered Nursing
6 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
7 references are to the Business and Professions Code (Code) unless otherwise indicated.

8 4. Code section 118, subdivision (b), provides that the suspension, expiration, surrender,
9 or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
10 disciplinary action during the period within which the license may be renewed, restored, reissued
11 or reinstated.

12 5. Code section 2750 provides, in pertinent part, that the Board may discipline any
13 licensee, including a licensee holding a temporary or an inactive license, for any reason provided
14 in Article 3 (commencing with section 2750) of the Nursing Practice Act.

15 6. Code section 2764 provides, in pertinent part, that the expiration of a license shall not
16 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
17 to render a decision imposing discipline on the license.

18 7. Under Code section 2811, subdivision (b), the Board may renew an expired license at
19 any time within eight years after the expiration.

20 STATUTORY PROVISIONS

21 8. Code section 490 provides, in pertinent part, that a board may suspend or revoke a
22 license on the ground that the licensee has been convicted of a crime substantially related to the
23 qualifications, functions, or duties of the business or profession for which the license was issued.

24 9. Code section 2761 states, in part:

25 The board may take disciplinary action against a certified or licensed nurse
26 or deny an application for a certificate or license for any of the following:

27 (a) Unprofessional conduct. . . .
28

1 (d) Violating or attempting to violate, directly or indirectly, or assisting in
2 or abetting the violating of, or conspiring to violate any provision or term of this
chapter [the Nursing Practice Act] or regulations adopted pursuant to it. . . .

3 (f) Conviction of a felony or of any offense substantially related to the
4 qualifications, functions, and duties of a registered nurse, in which event the record
of the conviction shall be conclusive evidence thereof.

5 10. Code section 2762 states, in part:

6 In addition to other acts constituting unprofessional conduct within the
7 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for
8 a person licensed under this chapter to do any of the following: . . .

9 (b) Use any . . . alcoholic beverages, to an extent or in a manner dangerous
10 or injurious to himself or herself, any other person, or the public or to the extent
11 that such use impairs his or her ability to conduct with safety to the public the
practice authorized by his or her license.

12 (c) Be convicted of a criminal offense involving the prescription,
13 consumption, or self-administration of any of the substances described in
14 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
record pertaining to, the substances described in subdivision (a) of this section, in
which event the record of the conviction is conclusive evidence thereof.

15 11. Code section 2765 provides:

16 A plea or verdict of guilty or a conviction following a plea of nolo
17 contendere made to a charge substantially related to the qualifications, functions
18 and duties of a registered nurse is deemed to be a conviction within the meaning of
19 this article. The board may order the license or certificate suspended or revoked,
20 or may decline to issue a license or certificate, when the time for appeal has
elapsed, or the judgment of conviction has been affirmed on appeal or when an
21 order granting probation is made suspending the imposition of sentence,
irrespective of a subsequent order under the provisions of Section 1203.4 of the
22 Penal Code allowing such person to withdraw his or her plea of guilty and to enter
a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
accusation, information or indictment.

23 **REGULATORY PROVISIONS**

24 12. California Code of Regulations, title 16, section 1444, states, in pertinent part:

25 A conviction or act shall be considered to be substantially related to the
26 qualifications, functions or duties of a registered nurse if to a substantial degree it
27 evidences the present or potential unfitness of a registered nurse to practice in a
28 manner consistent with the public health, safety, or welfare. . . .

1 **COST RECOVERY**

2 13. Code section 125.3 provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct: Convictions of Substantially Related Crimes)**

8 14. Respondent has subjected her registered nursing license to discipline under Code
9 sections 490 and 2761, subdivision (f), in that she was convicted of crimes that are substantially
10 related to the qualifications, functions, and duties of a Registered Nurse, within the meaning of
11 California Code of Regulations, title 16, section 1444. The circumstances are as follows:
12

13 15. On or about February 22, 2013, in a prior criminal proceeding entitled *People v. Lynn*
14 *Diane Gardiner*, San Mateo Superior Court Case Number NM415339A, Respondent was
15 convicted for violating Vehicle Code section 23152, subdivision (b), (Driving under the Influence
16 of Alcohol), a misdemeanor. The court ordered her to serve 3 years of informal probation and 30
17 days in county jail, to complete a multiple offender drinking driver program, to pay fines, to
18 comply with other terms and conditions
19

20 16. The factual circumstances underlying the conviction are that on or about November 8,
21 2012, the San Mateo Police Department arrested Respondent for violating Vehicle Code section
22 23152, subdivisions (a) and (b). The arresting officer observed Respondent driving erratically
23 and that Respondent's eyes were bloodshot and watery, her breath smelled of alcohol, and she
24 was unsteady on her feet. Respondent told the arresting officer that she was driving to her office.
25 Respondent's blood alcohol level was .12% and .13%.
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17. On or about July 6, 2011, in a prior criminal proceeding entitled *People v. Lynn Diane Gardiner*, San Mateo Superior Court Case Number NM02652A, Respondent was convicted for violating Vehicle Code section 23152, subdivision (a), (Driving under the Influence of Alcohol), a misdemeanor. Respondent admitted to violating Vehicle Code section 23578, an enhancement for having a blood alcohol level of .15% or higher. The court ordered her to serve 3 years of informal probation and 96 hours in county jail, to complete a drinking driver program, to pay fines, to comply with other terms and conditions, and to pay restitution to a vandalism victim, as more fully explained in paragraph 19, below.

18. The factual circumstances underlying the conviction are that on or about May 4, 2011, the California Highway Patrol arrested Respondent for violating Vehicle Code section 23152, subdivisions (a) and (b). Respondent crashed her car into a dirt embankment and caused major damage to the car. Witnesses observed respondent driving erratically, driving into oncoming traffic, and almost colliding with a pedestrian, a truck, and a school bus. The arresting officer observed that Respondent's eyes were bloodshot and watery, her breath smelled of alcohol, and she was unsteady on her feet. Respondent's blood alcohol level was .17% and .18%.

19. On or about February 17, 2011, Respondent was arrested by the Belmont Police Department for violating Penal Code section 594, subdivision (b)(2)(A), (Vandalism). Twice, a witness observed Respondent scrape her keys against the passenger side of a car in a parking lot. Respondent agreed to pay for the damages. A criminal complaint was filed in *People v. Lynn Diane Gardiner*, San Mateo Superior Court Case Number SM375906A. In Case No. NM02652A, the court ordered Respondent to pay restitution to the vandalism victim and dismissed the charge in Case No. SM375906A.

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SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Use of Alcohol in a Dangerous Manner)

20. Respondent has subjected her registered nursing license to discipline under Code sections 2761, subdivision (a), as defined by 2762, subdivision (b), in that she used alcoholic beverages in a manner dangerous or injurious to herself, any other person, or the public. The circumstances are more particularly set forth in paragraphs 15-18, above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Drug and Alcohol-Related Conviction)

21. Respondent has subjected her registered nursing license to discipline under Code sections 2761, subdivision (a), as defined by 2762, subdivision (c), in that she was convicted a crime involving the consumption of alcoholic beverages. The circumstances are more particularly set forth in paragraphs 15-18, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this First Amended Accusation, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 331005, issued to Lynn D. Gardiner, also known as Lynn Gardiner, also known as Lynn Diane Gardiner-Stewart, also known as Lynn Diane Stewart, also known as Lynn Gardiner Stewart, also known as Lynn Gardiner-Stewart;

2. Ordering Lynn D. Gardiner, also known as Lynn Gardiner, also known as Lynn Diane Gardiner-Stewart, also known as Lynn Diane Stewart, also known as Lynn Gardiner Stewart, also known as Lynn Gardiner-Stewart to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED:

April 4, 2013

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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